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Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
OF THE STATE OF CALIFORNIA

In the Matter of:	)	NMLS NO.: 1747828
	)	
THE COMMISSIONER OF BUSINESS	)	
OVERSIGHT,	)	
	)	STATEMENT OF ISSUES
Complainant,	)	
	)	
v.	)	
	)	
RUSSELL WILLIAM BURGIN,	)	
	)	
Respondent.	)	
	)	
	)	

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The Commissioner of Business Oversight (Commissioner) is informed and believes, and based upon such information and belief, alleges and charges as follows:

**I.**

**Introduction**

1. The Commissioner is authorized to administer and enforce the provisions of the California Financing Law (Fin. Code, § 22000 et seq.) (CFL) and the rules and regulations promulgated thereunder.

2. Russell William Burgin (Burgin) was disbarred from the Kentucky State Bar on August 25, 2016, for lying to a judge in open court when his membership status was questioned by the judge, practicing law with a suspended license, and numerous other professional misconduct violations. Prior to being disbarred, Burgin was suspended from the practice of law on five separate occasions.

3. Under the provisions of Financial Code section 22109.1, the Commissioner brings this action to deny Burgin's mortgage loan originator (MLO) license application.

## **II.**

### **Statement of Facts**

#### **A. Burgin's MLO application**

4. On or about August 2, 2018, Burgin submitted an individual MU4 License Form (MU4) to the Department of Business Oversight (Department), through the Nationwide Multistate Licensing System (NMLS), seeking licensure as a mortgage loan originator.

5. Burgin answered "Yes" to the following questions on the MU4:

- a. "Have you ever had an authorization to act as an attorney, accountant, or State or federal contractor that was revoked or suspended?"
- b. "Has any State or federal regulatory agency or foreign financial regulatory authority or self-regulatory organization (SRO) ever:
  - i. Revoked your registration or license?
  - ii. Entered an order concerning you in connection with any license or registration?"

6. On or around August 22, 2018, at the Department's request, Burgin uploaded an Opinion and Order Imposing Disbarment, entered by the Supreme Court of Kentucky (the Court) on August 25, 2016, in the matter of *Kentucky Bar Association v. Russell W. Burgin*, Case Number 2016-SC-000098-KB and 2016-SC-000203-KB. The Order is final.

#### **B. Burgin's history of disciplinary action**

7. Burgin was admitted to practice law in Kentucky on May 1, 2001.

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1           8.       March 22, 2012 30-day Suspension: On March 22, 2012, Burgin admitted to, and  
2 was found guilty by the Supreme Court of Kentucky of:  
3           a. failing to diligently proceed with a client’s case,  
4           b. failing to keep his client reasonably informed about the status of his client’s case,  
5           c. failing to deposit an advance into an escrow account,  
6           d. failing to timely refund any portion of the unearned fee, and  
7           e. failing to take reasonable steps to expedite the client’s case.

8           Burgin stipulated to a 30-day suspension from the practice of law, which was probated so  
9 long as he attended the Office of Bar Counsel’s Ethics Professionalism and Enhancement Program  
10 (EPEP).

11           9.       November 21, 2013 30-day Suspension: Approximately eight months later, on  
12 November 21, 2013, Burgin was again found guilty by the Supreme Court of Kentucky of one  
13 count of professional misconduct (lacking reasonable diligence and promptness in handling a  
14 client’s settlement check and Medicaid lien). The trial commissioner in the case found that Burgin  
15 had a “languid, if not cavalier, attitude with regard to his practice” and that he “exhibits an  
16 extreme[ly] lackadaisical and disconcerting nature and lack of diligence in the performance of his  
17 practice” and that his “delays in taking any remedial action, despite potential for consequences,  
18 were inexcusable.” Burgin was suspended from the practice of law for 60-days, with 30 days of the  
19 suspension probated for two years on the following conditions:

- 20           a. That Burgin attend and complete the EPEP course,
- 21           b. That Burgin show proof to Bar Counsel that he satisfied the Medicaid lien, and
- 22           c. Burgin pay costs of the proceedings in the amount of \$778.72.

23           10.       Burgin’s 30-day suspension was set to expire automatically in December 2013. The  
24 Kentucky State Bar objected to Burgin’s automatic reinstatement. As result, Burgin remained  
25 suspended and to this day, has not been reinstated or restored to practice and was subsequently  
26 disbarred in August of 2016.

27           11.       December 18, 2014 181-day Suspension: Approximately one year later, on  
28 December 18, 2014, the Supreme Court of Kentucky found Burgin guilty of:

- a. failing to act with reasonable diligence and promptness in dealing with a client matter,
- b. failing to keep the client reasonably informed regarding the status of the matter,
- c. failing to respond to his client’s requests for information,
- d. failing to give reasonable notice to his client that he had abandoned the matter and thereby ended the representation, and
- e. failing to respond to the State Bar of Kentucky’s complaint.

The Court further found that as of the date of the order, Burgin had not complied with the three requirements in the November 21, 2013 order. The court issued an order to show cause. Burgin failed to respond. The Court suspended Burgin from the practice of law for 181 days, concurrent with any other suspensions imposed and ordered Burgin to notify all courts or other tribunals and all of his clients of his inability to represent them. Burgin was ordered to refrain from accepting new clients or collect unearned fees while suspended.

12. May 14, 2015 181-day Suspension: Only five months later, on May 14, 2015, the Supreme Court of Kentucky found Burgin guilty of:

- a. failing to act with reasonable diligence and promptness in dealing with a client matter,
- b. failing to keep his client reasonably informed about the status of the matter,
- c. failing to promptly reply to his client’s requests for information,
- d. failing to give reasonable notice to his client that he had abandoned the matter and thereby ended the representation, and
- e. failing to respond to the State Bar of Kentucky’s complaint despite having been warned that the failure to respond could result in additional charges of misconduct under the rule.

The Court suspended Burgin from the practice of law for 181 days, consecutive with any other suspension. Burgin was also referred to the Kentucky Lawyer Assistance Program (KYLAP). Burgin was ordered to notify all courts or other tribunals and all of his clients of his inability to represent them, and to refrain from accepting new clients or collect unearned fees while suspended.

- 1           13.     September 24, 2015 One-year Suspension: On September 24, 2015, the Supreme  
2 Court of Kentucky found Burgin guilty of:
  - 3           a.   engaging in conduct involving dishonesty, fraud, deceit or misrepresentation,
  - 4           b.   failing to act with reasonable diligence and promptness in dealing with a client  
5           matter,
  - 6           c.   failing to keep his client reasonably informed about the status of the matter,
  - 7           d.   failing to promptly reply to his client’s requests for information,
  - 8           e.   failing to protect his client’s interests upon termination of representation as he  
9           failed to give her reasonable notice to allow time for employment of other  
10          counsel, failed to surrender papers and property that his client was entitled, failed  
11          to refund any advance payment of fee or expense that had not yet been earned,
  - 12          f.   practicing law despite being suspended, and
  - 13          g.   knowingly failed to respond to the bar complaint and charge issued against him,
- 14          14.     Specifically, the Court found that Burgin mislead a client into believing that he had  
15 filed a complaint on her behalf when he hadn’t, subsequently asked the client to file the complaint  
16 once he was suspended from the practice of law, required the client to pay the filing fee when she  
17 had already advanced the fee to Burgin, and continued to represent a client while suspended from  
18 the practice of law, among other things.
- 19          15.     The Court further suspended Burgin from the practice of law for one year,  
20 consecutive with the previously imposed suspensions. Burgin was ordered to notify all courts or  
21 other tribunals and all of his clients of his inability to represent them, and to refrain from accepting  
22 new clients or collect unearned fees while suspended.
- 23          16.     August 25, 2016 Disbarment: On August 25, 2016, the Supreme Court of Kentucky  
24 found Burgin guilty of:
  - 25           a.   engaging in conduct involving dishonesty, fraud, deceit or misrepresentation  
26           (two counts),
  - 27           b.   failing to keep his client reasonably informed about the status of the matter,
  - 28           c.   failing to promptly reply to his client’s requests for information,

- d. practicing law despite being suspended (three counts), and
- e. failing to respond to lawful demands for information from a disciplinary authority.

17. Specifically, the Court found that Burgin appeared in court on a misdemeanor charge on behalf of a client while suspended. “When his membership status was questioned in open court by the presiding district judge, [Burgin] represented to the court that he had been reinstated to “practice” which the Court found to be false. The Court also found that, Burgin “intimidated” his client’s wife in a marriage dissolution proceeding, so that she would agree to a final divorce decree, filed two separate marriage dissolution petitions while suspended, failed to comply with continuing-legal-education requirements, and failed to respond to the State of Kentucky’s complaint and charges in any manner.

18. Based on the findings and noting that Burgin’s “behavior demonstrates a complete disregard for the Court of Justice and the rules of ethics that is unlikely to be remedied by yet another order of suspension,” the Court permanently disbarred Burgin from the practice of law in Kentucky on August 25, 2016.

### III.

#### Law

19. Financial Code section 22109.1 provides in pertinent part:

- (a) The commissioner shall deny an application for a mortgage loan originator license unless the commissioner makes, at a minimum, the following findings:

\* \* \* \*

- (3) The applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this division.

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**IV.****Conclusion**

The Commissioner finds that Burgin does not meet at least one of the minimum requirements for the issuance of a mortgage loan originator license as provided by Financial Code section 22109.1. Burgin lied to a judge in open court when his membership status was questioned by the judge, practiced law with a suspended license, intimidated an adversary, failed to timely refund unearned fees, failed to deposit client funds into an escrow account, lacked reasonable diligence and promptness in handling a client's settlement check and Medicaid lien, failed to adhere to Court orders, failed to take required courses, failed to promptly respond to clients, failed to keep clients informed of the status of the matter, in addition to other professional misconduct violations. Burgin has not demonstrated the financial responsibility, character, and general fitness necessary to command the confidence of the community and to warrant a determination that he will operate honestly, fairly, and efficiently as a mortgage loan originator under the CFL and subdivision (a)(3) of section 22109.1 of the Financial Code.

Therefore, Financial Code section 22109.1 mandates that the Commissioner deny Burgin's request for a mortgage loan originator license.

WHEREFORE IT IS PRAYED that the mortgage loan originator license application filed by Russell William Burgin be denied.

Dated: November 16, 2018  
Los Angeles, CA

JAN LYNN OWEN  
Commissioner of Business Oversight

By \_\_\_\_\_  
Danielle A. Stoumbos  
Senior Counsel